

State of New Jersey

RICHARD J. CODEY

Acting Governor

Office of the Child Advocate
135 West Hanover Street - 3rd Floor
PO Box 092
Trenton, NJ 08625-0092

KEVIN RYAN Child Advocate

September 15, 2005

Valerie L. Egar Supervisor, Policy Unit Juvenile Justice Commission P.O. Box 107 Trenton, New Jersey 08625-0107

Re: Reproposal with Amendments *N.J.A.C.* 13:101, Proposal Number: PRN 2005-255

Dear Ms. Egar:

Thank you for providing the Office of the Child Advocate (OCA) the opportunity to comment on the re-proposal of *N.J.A.C.* 13:101. We have carefully reviewed the proposed regulations and offer the following comments.

We support the Juvenile Justice Commission's (JJC) decision to reduce the use of isolation among detained and incarcerated children and youth as a tool for behavior management. As the reproposed regulations clearly state, the extended use of isolation is tied to an increased risk of self-harm and suicide among youth. There is also compelling evidence that isolation is detrimental to the emotional well-being of youth.¹

The national standards for use of isolation among children and youth are clear. The American Correction Association's (ACA) published standards for accreditation and the performance-based standards set forth by the Council of Juvenile Correctional Administrators (CJCA) require that facilities using isolation first exhaust less restrictive means for ensuring the health, safety and well-being of youth in the facility.² The ACA limits the use of isolation among juveniles to five (5) days, which is also the standard used by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) in its conditions of confinement study.³

¹ Proposal Number 2005-225, Re-proposed *N.J.A.C.* 13:101 at 7; *see, e.g., Conditions of Confinement*, Juvenile Detention and Correction Facilities, Department of Justice, Office of Juvenile Justice and Delinquency Prevention, at 171-172, August 1994.

² See Standards for Juvenile Detention Facilities, American Correctional Association, Standard 3-JDF-3E-02, 3RD, 1991; see also Performance-Based Standards for Youth Correctional and Detention Facilities, Council of Juvenile Correctional Administrators, at 10, April 2003; see also Conditions of Confinement at 172.

³ Standards for Juvenile Detention Facilities, Standard 3-JDF-3E-03 3RD, 1991.

Valerie L. Egar Page 2 September 15, 2005

The OCA believes *N.J.A.C.* 13:101 would be improved by limiting the permissible use of isolation to a maximum period of 48 hours, but the re-proposal nonetheless is a very important – and commendable – expression of the JJC's desire to treat New Jersey's children consistent with current national standards. To the extent the re-proposal ends the lengthy utilization of isolation among children and youth, good riddance to a bad practice.

Beyond time limits on the use of isolation, the re-proposed regulations do not yet give adequate guidance to treatment teams about when the use of isolation is appropriate. Federal case law has made clear that isolation is a serious infringement of liberty and must only be used where alternative, less-restrictive measures cannot be utilized to achieve the same effects without significant additional cost or effort.⁴ To further integrate best practices into the operations of the JJC, the re-proposal should require that treatment teams deciding each sanction explore less-restrictive alternatives to isolation prior to imposition of the restriction. In the event room restriction is deemed necessary, treatment teams should be required to make a specific finding that a less restrictive alternative could not be employed and set forth the specific reasons why room restriction is necessary to achieve the desired goal. That finding should be documented and subject to independent review.

Among the more important recent developments in New Jersey's juvenile justice system is the training conducted for detention center staff and JJC secure correctional staff on managing the behaviors of detained and incarcerated children with mental illness. One of the foundational principles of that training is that reinforcing pro-social behaviors, rather than punishing anti-social behaviors, is critical to manage children's behavior in the short-term, and is more likely to lead to long-term rehabilitation. By reducing the maximum time a youth can be isolated, the JJC is moving toward the incarnation of that principle in policy and practice.

Thank you again for the opportunity to comment on the re-proposed regulations, and for your leadership in ushering in reform for detained and incarcerated children and youth. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Kevin M. Ryan Child Advocate Jennifer G. Velez First Asst. Child Advocate Brian Hancock Sr. Asst. Child Advocate

⁴ See Santana v. Collazo, 793 F.2d 41 (1st Cir. 1986) (finding it is unreasonable not to use less restrictive means where they can be as effective as isolation and require no or minimal additional cost or effort); see also *Gary H. v. Hegstrom*, 831 F.2d 1430, 1438 (9th Cir. 1987) (finding that court, in determining whether use of isolation was unconstitutional, must balance the level of intrusion imposed against the state's interest in the particular instance, to determine whether the condition imposed was reasonable).